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Illinois Commerce Commission  
RAIL SAFETY SECTION

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

**County of LaSalle, Illinois, Department of  
Highways and City of Streator, Illinois,**

**PETITIONERS**

**VS.**

**T04-0069**

**Burlington Northern and Santa Fe Railway  
Company and State of Illinois, Department  
of Transportation,**

**RESPONDENTS.**

**Petition for an Order of the Illinois  
Commerce Commission authorizing the  
replacement of the structure where E.  
Broadway Street goes over the tracks of the  
Burlington Northern Santa Fe Railway  
Company and the SB Warehousing, Inc. in  
Streator, LaSalle County, Illinois,  
apportioning costs thereof and directing an  
appropriate portion thereof to be borne by  
the Grade Crossing Protection Fund.**

**PETITIONERS, COUNTY OF LASALLE, ILLINOIS  
DEPARTMENT OF HIGHWAYS and  
CITY OF STREATOR, ILLINOIS BRIEF ON RECOMMENDATIONS  
OF PROJECT COST ALLOCATION**

Now comes the Petitioners, County of LaSalle, Illinois, Department of Highways and City of Streator, Illinois, by Troy D. Holland, LaSalle County Assistant State's Attorney and submits its brief in regard to allocation of costs. In regard to the proposed allocation Petitioners request the following: 60% participation from Grade Crossing Protection Fund through the Illinois Commerce Commission, 35% from the Federal Highway Bridge Replacement and Rehabilitation Program and Federal Bridge Funding as administrated by the State of Illinois and 5% participation from the Burlington Northern Santa Fe (BNSF). Local participation is within the 35% Federal funds share and is through the use of LaSalle County (the "County") and City of Streator's (the "City") share of its local allocation of federal money (T92-93). In other words, any increased

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usage of the County and City share of federal money for this project would take those monies away from other local projects (T98 – 99). In the event BNSF participation is not allowable, then Petitioners propose to increase the 35% share from the Federal Highway Bridge Replacement and Rehabilitation Program and Federal Bridge Funding to 40% as shown on the attached Exhibit “A”.

## **I. ICC ALLOCATION**

Petitioners propose to construct a grade separation involving a roadway bridge carrying E. Broadway Street over the BNSF and S.B. Warehousing Inc. railroad tracks to provide for the public health, safety, welfare and convenience. Petitioners consulting engineers have performed a study and determined that the proposed structure is the most cost effective alternative (T84-88). Petitioners request that an appropriate allocation of funds be determined for the project and contend that all aspects of the project are eligible for funding. Although the S.B. Warehousing, Inc. tracks are privately owned their use is clearly of a direct financial benefit to the BNSF as the BNSF services the five tracks for S.B. Warehousing, Inc. as stated by Cheryl Townlian of the BNSF (T61-62). (See also testimony of Lawrence Kinzer T102-103.)

In regard to the proposed structure crossing Illinois Street, testimony by Lawrence Kinzer indicates that the additional cost to span Illinois Street as opposed to building an earthen embankment is fairly minimal (\$75,000 more). (T94-95) Further, the BNSF uses Illinois Street to service their Streator yards. (T115). Therefore, Petitioners would request the full participation of the ICC in all aspects of the proposed project.

## **II. BNSF PARTICIPATION**

At the public hearing held January 26, 2005, and in its brief, BNSF takes the position that since the Petitioners applied for and received Federal-aid funds for use on the East Broadway Street project that BNSF is not required to share in the cost of the project. BNSF’s interpretation of the applicability of federal law and regulations is overbroad in several respects. Sections of the Code of Federal Regulations cited by BNSF do not rise to the level of a federal mandate that BNSF shall not be assessed a portion of any cost associated with reconstruction of the East Broadway Street project since the federal funding for this project comes from programs that do not preempt state

law and do not prohibit railroad participation. As testified to by Petitioners' witness, Lawrence Kinzer, the Major Bridge funds applied for is money that comes to a local agency through the Illinois Department of Transportation district office and Bridge Replacement Rehabilitation Program funding. (T38, 39) While these may be monies from federal sources, they are not necessarily "Federal-Aid projects" as contemplated by the Code of Federal Regulations section cited by BNSF.

It appears BNSF's position would only be applicable when the railroad bridge project is funded under 23 U.S.C. 130 Railway-highway crossing that provides under section (b) as follows:

(b) The Secretary may classify the various types of projects involved in the elimination of hazards of railways – highway crossings and may set for each such classification a percentage of costs of construction, which shall be deemed to represent the net benefit to the railroad or railroads for the purpose of determining the railroad's share of the cost of construction. The percentage so determined shall in no case exceed 10 per cent. The Secretary shall determine the appropriate classification of each project.

This is further evidenced by a full reading of the Code of Federal Regulations cited by BNSF, which states:

(b) **Pursuant to 23 U.S.C. 130 (b)**, and 49 CFR 1.48: (emphasis added)

(2) Projects for the reconstruction of existing grade separations are deemed to be generally of no ascertainable net benefit to the railroad and there shall be no required railroad share of the costs, unless the railroad has a specific contracted obligation with the State or its political subdivision to share in the costs. 23 CFR 646.210

This project's federal funding is under a program created in 23 U.S.C. 144 – the highway bridge replacement and rehabilitation program and major bridge funds administered by the State of Illinois. The Code of Federal Regulations Section cited by

the BNSF are referring to funds under Section 130 and not to the Section 144 funds applied for by LaSalle County for this project.

In the event that BNSF participation is not required for the reconstruction, at a minimum the BNSF should be required to bear the costs of upgrades in the approximate amount of \$62,455. LaSalle County Engineer Lawrence Kinzer testified that certain upgrades from the proposed overpass structure will benefit the railroad directly including structured fencing along the sidewalk and conduit and other drainage piping (T-23). These are not required costs of reconstruction but upgrades that directly benefit the BNSF. Further the BNSF should also be ordered to pay, waive or absorb the cost for preliminary and construction engineering, construction inspection and accounting/billing. Respondent should also be ordered to grant any necessary temporary construction permits and/or easements at no cost to petitioners.

### **III. BNSF– SIGNAL CIRCUITRY REQUEST**

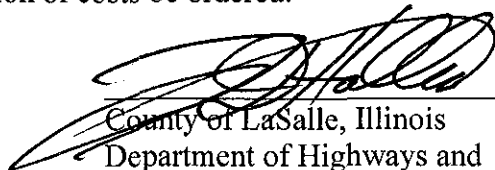
In regard to signal circuitry, the BNSF has submitted a costly plan that basically upgrades their signal circuitry system well beyond what is necessary for the purposes of the Petitioners' project. As testified to by Mr. Lyle Schaub, a civil engineer with Petitioners' consulting engineering firm, the only time the existing circuitry is even potentially interfered with is at the time of removal of the existing bridge structure and not during the construction of the new overpass. (T-120-123, T-132-133). Further, Mr. Schaub testified that during removal of the existing overpass the top portion of pedestal, that needs to be removed, could be removed, without interference. According to the BNSF, their signal cables are another 18 inches below the level that needs to be removed during demolition. (T-123).

The BNSF had originally submitted a proposal to Electric code its signal circuitry at a cost of \$280,000. They have now submitted a proposal to relocate approximately 4000 lineal feet of cable. (BNSF-Ex. 4). First, the proposal itself makes an assumption that the cable will be interfered with and needs protecting. As mentioned above the only potential threat to the circuitry, which is, buried underground comes during demolition of the existing overpass structure. As testified to by Mr. Schaub, cable relocation or protection is not necessary during the construction phase of the project because the new

structure is not being built in an area that interferes with the cable. Even assuming a worst-case scenario, providing absolute protection of the cable would, at most, only require 300 feet be relocated and protected. BNSF signal manager Dwight Golder admitted that approximately only 300 feet of cable need to be relocated (T-146). However, the BNSF has not or will not provide the cost estimate for that proposal. Instead the BNSF has provided an estimate for the relocation of over 4000 lineal feet, which is clearly an upgrade and not a necessary cost of the project.

For all the reasons stated above, Petitioners request that the petition be granted and that Petitioners proposed allocation of costs be ordered.

Dated: June 2, 2005



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County of LaSalle, Illinois  
Department of Highways and  
City of Streator, Illinois, Petitioners  
BY: TROY D. HOLLAND,  
LaSalle County Assistant State's Attorney

Troy D. Holland  
LaSalle County Assistant State's Attorney  
Governmental Complex  
707 E. Etna Road  
Ottawa, IL 61350  
(815)434-8358

PROOF OF SERVICE

I, Troy D. Holland under penalties of perjury, says that on the 2nd day of June 2005 he caused to be served copies of PETITIONERS BRIEF:

Honorable Dean Jackson  
Chief Administrative Law Judge  
Review & Examination Program  
Illinois Commerce Commission  
Transportation  
527 East Capitol Avenue  
Springfield, IL 62701

Parties of Record

Mr. Victor A. Modeer  
Director of Highways, IDOT  
ATTN: JEFF HARPRING, ROOM 205  
2300 South Dirksen Parkway  
Springfield, IL 62764

Pamela K. Leonard  
City of Streator, Clerk  
204 South Bloomington  
Streator, IL 61364

Burlington Northern and Santa Fe Railway Company  
CT Corporation System  
208 S. LaSalle Street  
Chicago, IL 60604

Mr. Michael L. Sazdanoff  
Kenneth J. Wysoglad & Associates  
118 S. Clinton Street  
Suite 700  
Chicago, IL 60661

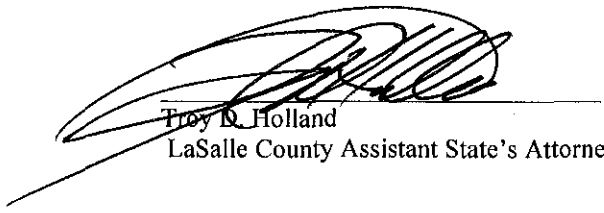
Mr. W. Douglas Werner  
Burlington Northern and Santa Fe Railway Company  
P.O. Box 961039  
Fort Worth, TX 76161-0039

Mr. Thomas Benson  
Spec. Asst. Attorney General  
IDOT  
2300 South Dirksen Parkway RM 311  
Springfield, Illinois 62764

Mr. Mark Leemon  
BNSF Railway Company  
80 44<sup>th</sup> Ave. NE  
Minneapolis, MN 55421

Mr. Ray Schmitt  
City of Streator, Mayor  
204 South Bloomington Street  
Streator, IL 61364

Mr. Lawrence J. Kinzer  
LaSalle County Highway Department  
P.O. Box 128  
1400 North 27<sup>th</sup> Road  
Ottawa, IL 61350



Troy D. Holland  
LaSalle County Assistant State's Attorney

Ex. A

REVISED

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Sheet 1 of 2

# **DISTRICT THREE** **Transportation Improvement Proposal – Highways**

Fiscal Year 2007Section Number 01-00590-00-BR(County)  
00-00076-00-BR (City)

<p><b>Location Map</b></p>	<table border="1"> <tr> <td>Program Category</td> <td>Major Bridge / ICC / HBRRP</td> </tr> <tr> <td>Marked Route/s</td> <td>None</td> </tr> <tr> <td>Key Route/s</td> <td>FAU 6145</td> </tr> <tr> <td>Road/Street Name/s</td> <td>E. Broadway Street</td> </tr> <tr> <td>County/s</td> <td>LaSalle</td> </tr> <tr> <td>Location</td> <td>From approx. 0.4 mi. East of IL 23 NB to approx. 0.8 mi. East of IL 23 NB</td> </tr> <tr> <td>Miles</td> <td>0.4</td> </tr> <tr> <td>Bridge Number/s</td> <td>050-8016</td> </tr> <tr> <td>Legislative District/s</td> <td>38<sup>th</sup> &amp; 76<sup>th</sup></td> </tr> <tr> <td>Congressional District/s</td> <td>11<sup>th</sup></td> </tr> <tr> <td>Urban Area/s</td> <td>Streator Urban Area</td> </tr> <tr> <td>City/s</td> <td>Streator</td> </tr> </table>	Program Category	Major Bridge / ICC / HBRRP	Marked Route/s	None	Key Route/s	FAU 6145	Road/Street Name/s	E. Broadway Street	County/s	LaSalle	Location	From approx. 0.4 mi. East of IL 23 NB to approx. 0.8 mi. East of IL 23 NB	Miles	0.4	Bridge Number/s	050-8016	Legislative District/s	38 <sup>th</sup> & 76 <sup>th</sup>	Congressional District/s	11 <sup>th</sup>	Urban Area/s	Streator Urban Area	City/s	Streator
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City/s	Streator																								
<p><b>Improvement Description:</b></p> <p>Removal and replacement of existing structure carrying E. Broadway Street over Burlington Northern &amp; Santa Fe Railroad tracks and switching yard. Includes intersection improvements at intersection of E. Broadway Street with Shabbona Street, Illinois Street and Iowa Avenue.</p>																									

## **Estimated Cost (\$000)**

Type of Work	Fiscal Year	Funding	Cost
P.E. & Land Acquisition	2005	ICC	\$488,000
Construction & C.E.	2007	ICC	\$3,923,852
Construction	2007*	Major Bridge	\$1,626,000
Construction	2007	HBRRP	\$1,315,235

<b>Total</b>	<b>\$7,353,087</b>
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\*Major Bridge Funds granted for FY 2005. Project schedule anticipates letting in mid-year 2006.

Sheet 2 of 2

Roadway	Existing	Proposed
Functional Class	Urban Collector	Urban Collector
CRS/Year/Road Ride	N/A	N/A
Surface Type	Bituminous	PC Concrete
ADT/Year/% Trucks	4100 / 2001 / 5%	5725 / 2026 / 5%
Pavement Width	30'	30'
Shoulder Width/Type	N/A (Curb & Gutter)	N/A (Curb & Gutter)
ROW/Roadway Width	70' - 80' / 30'	70' - 80' / 30'
Number of Lanes	2	2
No. of Intersection Imp.	3	3

Structure			
Bridge Number	050-8016	Overall Str. Condition	*
Bridge Name	Broadway Viaduct	Posted Load Limit	15 Ton
Suff. Rating/Month/Year	14 / 06 / 03	Width/Length (Existing)	24' / 843'
Oper./Inv. Ratings	22.4 / 21.7 Tons	Width/Length (Proposed)	30' / 386'**
Deck/Super./Sub. Rating	7 / 2 / 4		

Structure			
Bridge Number		Overall Str. Condition	
Bridge Name		Posted Load Limit	
Suff. Rating/Month/Year		Width/Length (Existing)	
Oper./Inv. Ratings		Width/Length (Proposed)	
Deck/Super./Sub. Rating			

## Statement/Other Information:

\*Intolerable - High priority for replacement

\*\*Mechanically Stabilized Earth (MSE) walls are proposed for west and east approaches to reduce structure length from 843' to 386' (±).



No.	Items of Work	Detailed Estimate of Cost	I.C.C.	BNSF RR	Remaining After ICC	Major Bridge (89% Remaining)	Major Bridge Cap	Remaining (Total ICC-RR-89% Br)
1	Design Engineering	700,000.00	420,000	0	280,000	0	0	280,000
2	Construction Engineering	420,000.00	252,000	0	168,000	0	0	168,000
3	Right-of-Way / Easements	22,000.00	13,200	0	8,800	0	0	8,800
4	Remove Existing Structure	800,000.00	480,000	0	320,000	256,000	210,482	109,518
5	Approach Pavement	980,316.25	588,190	0	392,127	313,701	257,924	134,202
6	Restoration of Surfaces	11,000.00	6,600	0	4,400	3,520	2,894	1,506
7	Proposed Structure	3,534,672.00	2,120,803	0	1,413,869	1,131,096	929,963	483,886
8	Special Structure Fence	20,000.00	12,000	0	8,000	6,400	5,262	2,738
9	Traffic Control & Mobilization	165,000.00	99,000	0	66,000	52,800	43,412	22,588
10	RR Utility Adjustments / Relocation	-	0	0	0	0	0	0
11	Legal	11,000.00	6,600	0	4,400	0	0	4,400
12	Plan Review and Approval by RR	20,000.00	12,000	0	8,000	0	0	8,000
13	Railroad Protective Liability Insurance	30,000.00	18,000	0	12,000	9,600	7,693	4,107
14	Railroad Flagperson	88,000.00	52,800	0	35,200	28,160	23,153	12,047
15	Contingency	551,098.83	330,859	0	220,440	173,352	144,996	75,444
			0	0	0	0	0	0
			0	0	0	0	0	0
			0	0	0	0	0	0
	Subtotals	7,353,087.08	4,411,852	0	2,941,236	1,977,828	1,826,000	1,315,235

I.C.C. Participation	\$ 4,411,852
BNSF RR Participation	\$ -
Major Bridge (Cap)	\$ 1,826,000
HBRRP	\$ 1,315,235
Total Estimated Cost	\$ 7,353,087



**LaSalle County State's Attorney**  
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Illinois Commerce Commission  
RAIL SAFETY SECTION

June 2, 2005

Illinois Commerce Commission  
Chief Clerk's Office  
527 East Capital Avenue  
Springfield, IL 62701

RE: County of LaSalle et.al. vs. BNSF and IDOT  
Case No. T04-0069

Good Morning:

Please file the enclosed Brief on Allocation and proof of service in the above captioned case and return a file stamped copy in the enclosed self-addressed stamped envelope. If you have any questions please contact me at (815) 434-8358. Thank you for your cooperation.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "T. Holland", is written over the typed name.

TROY D. HOLLAND  
Assistant State's Attorney  
Civil Division

TDH/gt

ltr IL

HH/DJ